

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 83-006-04-1-4-00013
Petitioners: Albert & Joyce Clark
Respondent: Eugene Township Assessor (Vermillion County)
Parcel #: 006-014-0021-00
Assessment Year: 2004

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Vermillion County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 28, 2004.
2. The Petitioners received notice of the decision of the PTABOA on December 29, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on January 19, 2006. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 10, 2007.
5. The Board held an administrative hearing on February 28, 2007, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Albert Clark, Petitioner,
 - b. For Respondent: Anna Lou Fultz, Eugene Township Assessor.¹

¹ Vermillion County Assessor Patricia L. Richey attended the hearing, but did not file a Notice of Appearance, was not sworn and did not testify at the hearing.

Facts

7. The subject property is one of nine commercial parcels located north of the intersection of Curtis and Division streets in Cayuga, Eugene Township, in Vermillion County. The nine properties under appeal are not contiguous parcels but are located in close proximity to one another and are used in the operation of a vehicle dealership owned by the Petitioners. The parcel under review in this hearing is located at 105 North Division Street. It has a 19 foot frontage and is 140 feet deep and is improved with a commercial building housing an office and service area.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed values of the subject property to be \$4,600 for the land and \$205,400 for the improvements, for a total assessed value of \$210,000.
10. The Petitioners requested an assessment of \$1,800 for the land and \$175,000 for the improvements, for a total assessed value of \$176,800.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that Indiana law and the Department of Local Government Finance's (the DLGF) regulations require that a public hearing be held before land values are adopted in a general reassessment. *A. Clark testimony.* Mr. Clark testified that no such hearing was held in Vermillion County for the 2002 reassessment. *Id.*
 - b. The Petitioners further contend that the land is assessed in excess of its market value. *A. Clark testimony.* In support of this contention, the Petitioners submitted an opinion of value letter from realtor James R. Crowder dated February 26, 2006. *Petitioner Exhibit 1.* According to the letter, a lot in downtown Cayuga with sixty feet of frontage would contribute approximately \$5,000 to the purchase price of a property in that area. *Id.* Thus, Mr. Crowder concluded the value of a lot is \$83.50 per front foot. *Id.*
 - c. Similarly, the Petitioners contend that the 2004 assessed value of a nearby property supports their argument that the subject property's assessment is excessive. *A. Clark testimony.* According to Mr. Clark, the "comparable" property's 2004 assessed value is \$4,200. *Id.* In support of this contention, Mr. Clark submitted a property record card (PRC) for the "comparable" parcel located in downtown Cayuga. *A. Clark testimony; Petitioner Exhibit 2.*
 - d. Finally, the Petitioners contend that the improvement is assessed in excess of its market value. *A. Clark testimony.* According to Mr. Clark, the building cost

\$125,000 to construct in 1998 or 1999. *Id.* Mr. Clark also testified that subsequent to its construction, the building had interior changes costing \$30,000 to \$35,000.² *Id.*

12. The Respondent agreed that, in general, land values in Cayuga are excessive, but testified they were established by a company under contract to the county for the 2002 reassessment. *Fultz testimony.* According to the Respondent, the former county assessor assessed all commercial properties in the county. *Id.*

Record

13. The official record for this matter is made up of the following:

a. The Petition,

b. The compact disk recording of the hearing labeled 83-006-04-4Clark00013,

c. Exhibits:

Petitioner Exhibit 1 - Letter from James R. Crowder dated February 26, 2006,
Petitioner Exhibit 2 - Copy of PRC for parcel #006-014-0002-00,

Respondent Exhibit 1 - Plat map of downtown Cayuga with appealed parcels
numbered by the ALJ,

Board Exhibit A - Form 131 petition and all subsequent mailings to the Board,
Board Exhibit B - Notice of Hearing and re-schedules,
Board Exhibit C - Hearing sign-in sheet,
Board Exhibit D - A list of the nine petitions, parcels and assessments.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

² Mr. Clark testified that the building had been assessed using a wall height of 20 feet, when it should have been assessed using a wall height of 14 feet. A review of the subject property's PRC showed a wall height of 14 feet and a note that it had been changed following the PTABOA hearing in December 2005. The Petitioners then agreed that the wall height is now correct. The notes on the PRC also revealed that a plumbing fixture had been removed from the assessment, and that the building construction was completed in December 1998.

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

Opinion of Value

- a. The Petitioners contend that the land is assessed in excess of its market value. *A. Clark testimony*.³ In support of this contention, the Petitioners submitted an opinion of value letter concluding that the value of a lot is \$83.50 per front foot. *Petitioner Exhibit 1*.
- b. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind.Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he market-value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.*, at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4, 8. This is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, a party relying on evidence concerning a property’s market value as of a date substantially removed from the relevant

³ The Petitioners also contend that no public hearing was held before land values were adopted in Vermillion County for the 2002 reassessment. *A. Clark testimony*. The Petitioners, however, presented no evidence in support of this contention. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

- d. Here, the Petitioners rely on an opinion of value from Mr. Crowder. *See Petitioner Exhibit 1.* The opinion of value sets forth Mr. Crowder's opinion that the value of a lot in Cayuga is \$83.50 per front foot. *Id.* The letter, however, does not state that Mr. Crowder used generally accepted appraisal methods to arrive at his opinion of value. In fact, the document does little more than reference a sale of a property located at 113 N. Division Street "some time ago" for \$9,000. *Id.* Moreover, neither Mr. Crowder nor the Petitioners attempt to relate the realtor's opinion of value to the subject property's market value-in-use as of January 1, 1999. Consequently, the opinion of value is not probative of the subject property's market value-in-use. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

Comparable Assessment

- e. The Petitioners also contend that the property is over-assessed based on the assessment of a nearby property. *A. Clark testimony; Petitioner Exhibit 2.* Mr. Clark argues that the \$4,200 assessed value for parcel #006-014-0002-00 evidences that the subject property's land assessment of \$4,600 is over-valued. *A. Clark testimony.*
- f. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioners prove that their property is not assessed uniformly or equal to comparable properties, the Petitioners argue, their assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Township Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- g. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. *See Blackbird Farms Apts.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs

without further explanation); *Lacy Diversified Industries, Ltd.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- h. Other than noting the properties' location in downtown Cayuga, Mr. Clark did not compare relevant characteristics of the purportedly comparable property to those of the subject property. *Petitioner Exhibit 2; Respondent Exhibit 1*. Thus, the Petitioners failed to raise a prima facie case that the subject property's assessment is over-stated based on the assessed value of the purportedly "comparable" property.⁴ We note, however, that Petitioners' "comparable" property actually supports the subject property's assessment. The "comparable" parcel has 17 feet of frontage and is assessed for \$4,200. The subject parcel has 19 feet of frontage and is assessed for \$4,600.

Construction Cost

- i. Finally, the Petitioners contend that the improvement is valued in excess of its market value because it was built in either 1998 or 1999 for \$125,000.⁵ *A. Clark testimony*. Mr. Clark also testified that an additional \$30,000 to \$35,000 was spent for interior improvements. *Id.*
- j. The primary method for assessing officials to determine market value-in-use in Indiana is the cost approach to value. *Id.* at 3. To that end, Indiana has promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A* (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. *MANUAL* at 5. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. *Id.* "Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal guidelines." *Id.*

⁴ The Respondent agreed with the Petitioners that land values in Cayuga were excessive. *Fultz testimony*. In making such a concession, the Respondent supported the Petitioners first prong of the Petitioners' burden to show that the assessment was incorrect. *See Meridian Towers*, 805 N.E.2d at 478. The Petitioners, however, still have the burden to submit probative evidence as to what the correct assessment should be. *Id.* Here, the Petitioners failed to do so and thus fail to show that the assessment should be changed.

⁵ To the extent that the Petitioners contend an influence factor should be applied to the improvements, arguments regarding strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Even if the Respondent's assessment did not fully comply with the REAL PROPERTY ASSESSMENT GUIDELINES, the Petitioner must show that the total assessment was not a reasonable measure of true tax value. *See* 50 IAC 2.3-1-1(d). The Petitioners failed to show through market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. Thus, the Petitioner failed to raise a prima facie case that the assessment is in error.

- k. Thus, a Petitioner may show the value of a property by evidence of its construction cost. "Construction cost," however, includes direct labor and material cost plus indirect expenses required to construct an improvements. GUIDELINES at 1. According to the Guidelines, direct costs include, but are not limited to, labor, materials, supervision, utilities used during construction and equipment rental. *Id.* Indirect costs include building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. *Id.* Construction costs must represent all costs (direct and indirect), regardless of whether or not they were realized, as in the case of do-it-yourself construction. *Id.*
- l. Here, the Petitioners merely alleged that the building cost \$125,000 to construct. The Petitioners, however, failed to explain how that value was determined and what costs were included in the Petitioner's estimate of construction costs. Further, the Petitioners failed to submit any documentation in support of its construction costs. Without such explanation or evidence, the Petitioners' statements are conclusory at best. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119 (Ind. Tax 1998).⁶

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **May 23, 2007**

Commissioner,
Indiana Board of Tax Review

⁶ The Petitioners' contention that the building could be replaced, at the time the appeal was filed in early 2006, for \$175,000 when increased construction costs are considered is wholly without basis and will not be considered.

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.